

# MANISTEE CITY PLANNING COMMISSION

70 Maple Street  
P.O. Box 358  
Manistee, Michigan 49660

MEETING OF NOVEMBER 6, 1997

There will be a meeting of the Manistee City Planning Commission to be held on Thursday, November 6, 1997 at 7:00 P.M. in the Council Chambers, City Hall, 70 Maple Street, Manistee, Michigan.

## AGENDA

- I. Roll Call
- II. Matters Pertaining to the General Citizenry:
  - A. Public Hearing:
    - 1. Manistee United Methodist Church
    - 2.
  - B. Site Plan Reviews:
    - 1. \* mancino's - sign
    - 2.
  - C. Questions, Concerns and Consideration of Matters Pertaining to Citizens in Attendance:
    - 1.
    - 2.
- III. Business Session:
  - A. Approval of Minutes from Last Meeting (10/2/97)
  - B. New Business:
    - 1. Manistee United Methodist Church
    - 2. Marilyn Field - encroachment/City Property
    - 3. Harbor Village
    - 4. Resolution Richard Franckowiak
    - 5. Telecommunication Towers
    - 6. Appointment to Zoning Board of Appeals
    - 7.
  - C. Unfinished Business:
    - 1.
    - 2.
  - D. Other Communications:
    - 1. City Update
    - 2.
  - E. Reports:
    - 1. D.D.A. Update
    - 2. Zoning Board of Appeals
    - 3. Site Plan Review/Historic Overlay Committees
    - 4. Joint City Review/Ordinance Committee
- IV. Work/Study Session:
- V. Adjournment


cc: Planning Commission Members  
City Council  
R. Ben Bifoss, City Manager  
Jon Rose, Community Development Officer  
Lori Donnan, Administrative Assistant  
Kurt Schindler, County Planner  
Manistee News Advocate  
Manistee Observer  
WMTE Radio  
WXYQ Radio  
Jeff Mikula, Abonmarche  
Julie Beardslee, Assessor

# CITY OF MANISTEE

## MEMORANDUM

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TO: Planning Commission Members

FROM: Jon Rose 

DATE: October 31, 1997

RE: November 6, 1997 Planning Commission Meeting

Enclosed is the Agenda for the November 6, 1997 Planning Commission Meeting and attachments. On the agenda is a request for a Special Use Permit for the Manistee United Methodist Church. The Church plans to purchase the house located at 380 Second Street, tear the house down and pave the property for additional parking.

Enclosed is a memo from City Assessor Julie Beardslee giving background information on an encroachment on City owned property. Marilyn Field is the adjoining property owner. A survey is enclosed for review. We should also discuss possible uses for this City owned property.

Dave Hoffman would like to address the Planning Commission regarding signage at Harbor Village. Enclosed is a site plan. He will also to give an update on current projects and future projects.

Richard Franckowiak decided not to re-apply to the Planning Commission when his term expired in October. Duane Jones sent a letter of resignation due to work restraints not allowing him to attend meetings. These two vacancies along with the vacancy by Mathew McShane have brought the number up to three. **If anyone knows someone who might be interested in being a member of the Planning Commission please ask them to call City Hall for information.**

A memo from Varnum, Riddering, Schmidt & Howlett is enclosed in your packet. This item is on the agenda under new business. We will need to address the lack of language in our current Zoning Ordinance regarding telecommunication towers. Your May 1997 issue of Planning and Zoning News is devoted to this issue. You will want to review this issue and bring it to the meeting.

If you have any questions or are unable to attend the meeting, please call me at 723-2558. We will see you at the meeting.

JRR:djm

# CITY OF MANISTEE

Michigan

11-6-97  
COUNCIL GOVERNMENT  
CITY MANAGER PLAN

P.O. BOX 358  
MANISTEE, MICHIGAN 49660

## APPLICATION for SPECIAL USE PERMIT

MANISTEE UNITED METHODIST CHURCH  
APPLICANT  
387 FIRST STREET  
ADDRESS  
MANISTEE, MI 49660  
CITY, STATE & ZIP CODE  
TELEPHONE NUMBERS - (HOME) 723-5014  
(WORK) 723-6219

FOR OFFICE USE ONLY	
PERMIT NUMBER	
DATE RECEIVED	10-21-97
TAX PARCEL NUMBER	51-51-574-702-09
FEE RECEIVED & DATE	\$150.00 10-30-97
RECEIPT NUMBER	1057
ACTION	
REFERRED TO PLANNING COMMISSION	11-6-97
DATE OF PUBLIC HEARING	11-6-97
ACTION TAKEN	<input type="checkbox"/> APPROVED <input type="checkbox"/> DENIED
DATE OF ACTION	
EXPIRATION DATE OF PERMIT	

PLEASE NOTE: ALL QUESTIONS MUST BE ANSWERED COMPLETELY. IF ADDITIONAL SPACE IS NEEDED, NUMBER AND ATTACH ADDITIONAL SHEETS. ALL INFORMATION REQUESTED ON THIS FORM MUST BE COMPLETED AND ANY ADDITIONAL INFORMATION REQUIRED BY THE ZONING ADMINISTRATOR, CITY ENGINEER OR CITY PLANNING COMMISSION, IN ORDER TO ADMINISTER THE ZONING & BUILDING ORDINANCES, MUST BE SUPPLIED. APPLICANTS ARE ENCOURAGED TO SEEK ASSISTANCE FROM THE ZONING ADMINISTRATOR/BUILDING INSPECTOR IN FILLING OUT THIS FORM. IF POSSIBLE, PLEASE CALL 516-723-2558 (MONDAY THROUGH FRIDAY, FROM 8 A.M. TO 5 P.M.) AND ASK FOR THE ASSESSOR'S OFFICE TO MAKE AN APPOINTMENT TO AVOID DELAYS.

### I. ACTION REQUESTED

IT IS HEREBY REQUESTED THAT THE MANISTEE CITY PLANNING COMMISSION APPROVE THE ISSUANCE OF A SPECIAL USE PERMIT ON THE PROPERTY DESCRIBED IN "II PROPERTY INFORMATION" (BELOW) WHICH IS LOCATED IN THE \_\_\_\_\_ ZONING DISTRICT, FOR THE PURPOSE OF: (STATE PROPOSED USE OF PROPERTY) WE WISH TO PURCHASE THE HOME AT 380 SECOND STREET, REMOVE IT, AND MAKE THE LAND INTO ADDITIONAL PAVED PARKING FOR THE CHURCH.

A PREVIOUS APPLICATION FOR A VARIANCE, SPECIAL USE PERMIT OR REZONING ON THIS LAND (HAS / HAS NOT) BEEN MADE WITH RESPECT TO THESE PREMISES IN THE LAST \_\_\_\_\_ YEARS.

IF A PREVIOUS APPEAL, REZONING, OR SPECIAL USE PERMIT APPLICATION HAS BEEN MADE, STATE THE DATE, NATURE OF ACTION REQUESTED AND THE DECISION: \_\_\_\_\_, DATE \_\_\_\_\_.

ACTION REQUESTED \_\_\_\_\_

DECISION: ☐ APPROVED ☐ DENIED

### II. PROPERTY INFORMATION

#### A. LEGAL DESCRIPTION OF PROPERTY AFFECTED:

TAX ROLL PARCEL PROCESS NUMBER 51-51-574-702-09  
ADDRESS OF PROPERTY: 380 SECOND STREET

(CONTINUED)

II. PROPERTY INFORMATION (CONTINUED)

B. LIST ALL DEED RESTRICTIONS- CITE LIBER &amp; PAGE WHERE FOUND &amp; ATTACH:

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C. NAMES &amp; ADDRESSES OF ALL OTHER PERSONS, FIRMS OR CORPORATIONS HAVING A LEGAL OR EQUITABLE INTEREST IN THE LAND:

Mr. J. M. Smith, 1234 Main St.

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D. THIS AREA IS ☐ UNPLATTED, ☒ PLATTED, ☐ WILL BE PLATTED  
IF PLATTED, NAME OF PLAT Tract 5, 1/2 Sec 1, T1N, R1EE. THE PRESENT USE OF THE PROPERTY IS Residential

F. ATTACH A SITE PLAN WHICH MEETS THE REQUIREMENTS OF THE SPECIAL USE PERMIT ORDINANCE (SEE ATTACHED LIST OF REQUIREMENTS)

G. IS A PROPERTY SURVEY ATTACHED? ☐ YES ☒ NOH. ESTIMATED COMPLETION DATE OF CONSTRUCTION (IF APPLICABLE): OCTOBER 1, 1993III. STATEMENT OF JUSTIFICATION FOR REQUESTED ACTIONA. STATE SPECIFICALLY THE REASON FOR THIS SPECIAL USE PERMIT REQUEST AT THIS TIME  
TO INCREASE ON SITE PARKING FOR OUR MEMBERS & GUESTS  
TO COMPLY WITH CITY REQUIREMENTS FOR ON SITE  
PARKING  
TO ALLOW ADDITIONAL BUILDING CONSTRUCTION AS REQUIREDB. STATEMENT OF SUPPORT FOR THE REQUEST. PLEASE JUSTIFY YOUR REQUEST FOR A SPECIAL USE PERMIT BELOW. THE JUSTIFICATION SHOULD ADDRESS THE FOLLOWING CONCERNS:  
(ATTACH ADDITIONAL SHEETS)

1. THE RELATIONSHIP OF THE SPECIAL USE PERMIT CONDITIONS (ARTICLE 86, SECTION 8609) TO THE PARTICULAR SPECIAL USE PROPOSED. DO THEY POSE ANY UNUSUAL PROBLEMS FOR COMPLIANCE?
2. RELATIONSHIP OF THE PROPOSED USE TO DEVELOPMENT PLANS OF MANISTEE COUNTY AND THE CITY OF MANISTEE.
3. IMPACTS OF THE ADJACENT PROPERTY AND NEIGHBORHOOD. IN PARTICULAR, FIRST INDICATE WHICH IMPACTS OF THE PROPOSED USE ON THE ADJACENT PROPERTY ARE ANTICIPATED AND SECOND, WHAT STEPS WILL BE TAKEN TO MITIGATE ANY NEGATIVE IMPACTS. CONSIDER THE FOLLOWING CONCERNS:
  - A. WILL THE PROPOSED USE ADVERSELY AFFECT THE HEALTH, SAFETY OR ENJOYMENT OF PROPERTY OF PERSONS RESIDING OR WORKING IN THE NEIGHBORHOOD?
  - B. WILL PROPOSED USE BE DETRIMENTAL TO THE PUBLIC WELFARE OR INJURIOUS TO PROPERTY OF IMPROVEMENTS IN THE NEIGHBORHOOD?

IV. INFORMATION REQUIRED IN APPLICATION (AS PER ARTICLE 86, SECTION 8604)

A. AN APPLICATION FOR SPECIAL USE PERMIT SHALL INCLUDE:

1. A DETAILED SITE PLAN, AS SPELLED OUT IN SECTION 9406 OF THIS ORDINANCE, A COPY OF WHICH IS ATTACHED.
2. A SPECIFIC STATEMENT AND SUPPORTING INFORMATION REGARDING THE REQUIRED FINDINGS FOR THE SPECIAL USE PERMIT, AS STATED IN SECTION 8609.
3. PROPOSED LOCATION OF ANY OPEN SPACES, LANDSCAPING AND BUFFERING FEATURES SUCH AS GREENBELTS, FENCES, ETC.

IV. INFORMATION REQUIRED IN APPLICATION (CONTINUED)

## B. IN ADDITION, THE APPLICANT MAY BE REQUIRED TO FURNISH:

1. ELEVATIONS ON ALL BUILDINGS, INCLUDING ACCESSORY BUILDINGS.
2. AN ENVIRONMENTAL ASSESSMENT.
3. EVIDENCE OF HAVING RECEIVED OR HAVING AN AGREEMENT FOR CONCURRENT APPROVAL FOR ANY OTHER NECESSARY PERMITS REQUIRED PRIOR TO A CONSTRUCTION CODE PERMIT.
4. MEASURES WHICH WILL BE UNDERTAKEN TO CONTROL SOIL EROSION, SHORELINE PROTECTION, EXCESSIVE NOISE, OR ADVERSE IMPACTS OF THE DEVELOPMENT ON THE SURROUNDING PROPERTIES.

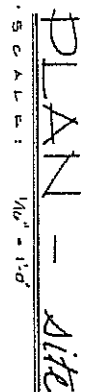
## C. THE APPLICANT SHALL CERTIFY THE INFORMATION INCLUDED IS CORRECT AND THAT MEASURES PROPOSED TO MITIGATE ADVERSE IMPACTS WILL BE COMPLETED IN A TIMELY FASHION, IF THE SPECIAL USE PERMIT IS APPROVED.

V. CERTIFICATION AND AFFIDAVIT

THE UNDERSIGNED AFFIRMS THAT HE/SHE/they IS/ARE THE ☐ OWNER, ☐ LESSEE, ☐ OWNER'S REPRESENTATIVE, ☐ CONTRACTOR INVOLVED IN THE APPLICATION; AND THAT THE INFORMATION INCLUDED IN THIS APPLICATION IS CORRECT. FURTHER, IF THE REQUEST IS APPROVED, THE APPLICANT CERTIFIES THAT MEASURES PROPOSED TO MITIGATE ADVERSE IMPACTS WILL BE COMPLETED IN A TIMELY FASHION AND WILL ABIDE WITH THE ALL OF THE REQUIREMENTS OF ARTICLE 86 OF THE CITY OF MANISTEE ZONING ORDINANCE.

SIGNATURE(S) OF APPLICANT(S)

William G MaguireCHAIRMAN, TRUSTEESMANISTEE UNITED METHODIST CHURCHDATED OCTOBER 20, 1999





November 06, 1997

The variance that you have under consideration this evening does not need to be granted.

A number of things prompt this statement.

First, destroying another house in the central residential district will certainly affect the value of the surrounding properties, most likely lowering property values for the neighbors.

Further, an environmental impact will be made. Less green area and additional stress put on city waste water facilities.

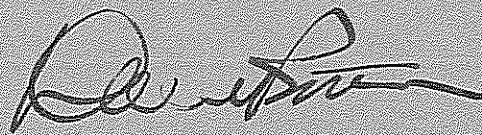
Additionally, a small loss in tax revenues, shifting (again) a small extra burden to the rest of city taxpayers.

While not seeking to embroil your committee in church politics the parking problem could be solved by better time management on the Methodist Church's part. An earlier start to one service would clear the parking lot for later arrivals. There have never been fewer than six to twelve empty parking spaces at 11:00AM, and winter poses no problem as many "go south" for the season.

There is also a good deal of opposition in the congregation, not expressed openly for various reasons.

One push comes from the Ramsdell Theatre group who have promised and unspecified sum to help with the project. I suggest that this expenditure is outside of the terms of their lease, and may not be deliverable.

In short, we need no more paved parking lots; the character of the central residential district should be preserved, and the Methodist Church does not need to destroy a fifth house.

A handwritten signature in dark ink, appearing to be "R. Ramsdell", written in a cursive style.



616-723-2558  
FAX 616-723-1546

October 30, 1997

TO: Planning Commission  
FROM: Julie Beardslee, City Assessor

RE: Staff recommendation  
City owned river front property on the east end of 6<sup>th</sup> Ave.  
Parcel #51-51-211-105-01 (City)& 51-51-211-105-02 (Field)

Marilyn Field of 219 6<sup>th</sup> Ave. has indicated an interest in curing an encroachment of her garage addition, driveway and fence onto City property. Please see the attached survey for reference. The pertinent facts are; the property is zoned R-5, the minimum lot requirement is 5,000 square feet and the square footage of the lot is currently 4,500 square feet. The side yard setback shall not be less than ten feet. The side yard setback for accessory buildings is a minimum of three feet. The minimum parcel width is 60 feet.

The City is in possession of a valuable parcel of river front property. It would not be in the best interest of the City of Manistee to sell any part of this parcel which would compromise the value of the whole. The highest and best use of this parcel is difficult to determine at this time. The value is going to increase as the market continues to rise. The following recommendation considers the value of the property, and attempts to eliminate the loss of market value.

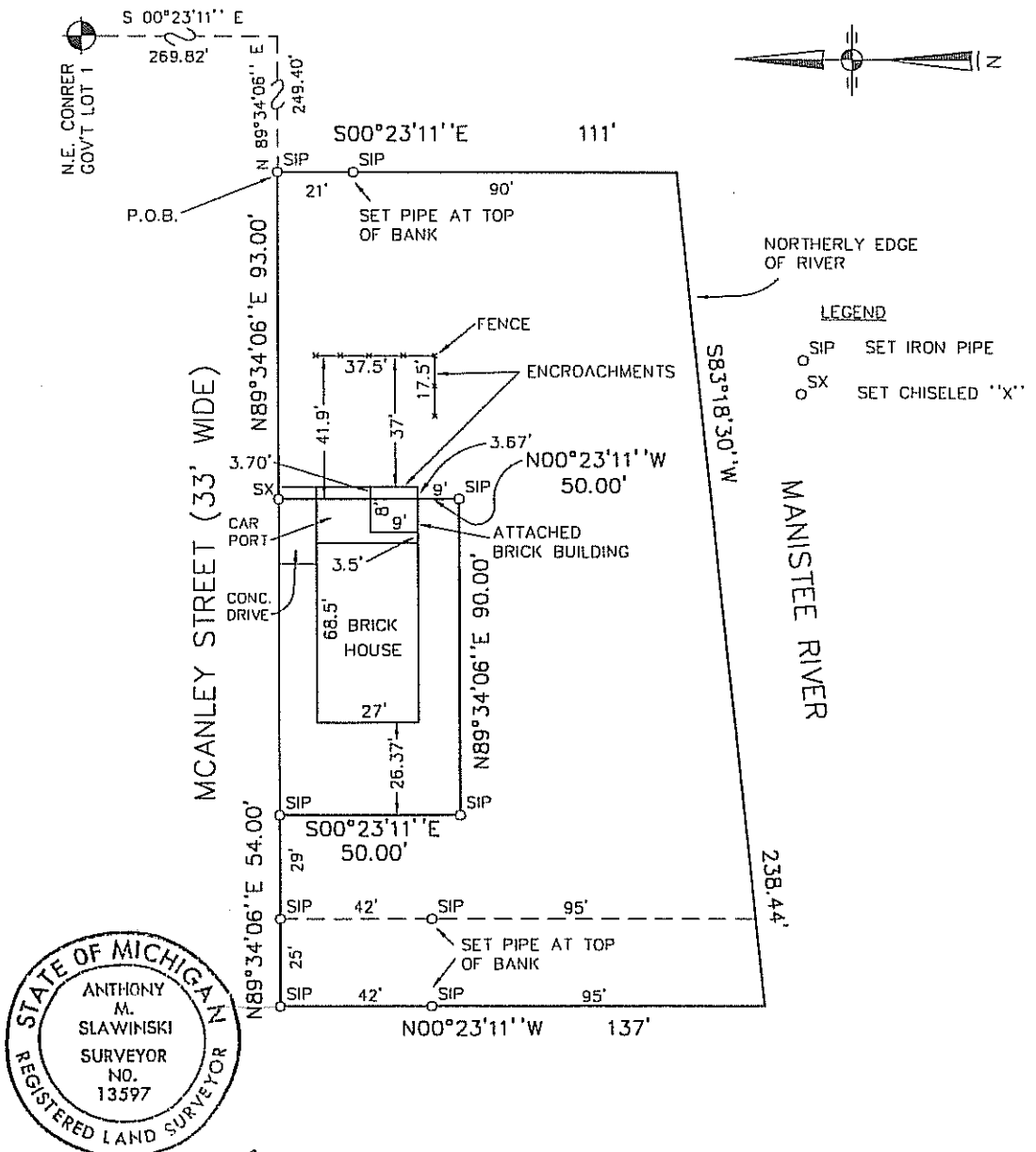
It is the recommendation of staff that the best way to cure the encroachment would be for Marilyn Field and the City of Manistee to trade property. The City of Manistee could give Ms. Field 14 feet by 50 feet of property adjacent to her present east property line. This would cure the 3.7 foot encroachment and allow conformance with the required 10 foot setback for buildings (3.7 feet of encroachment + 10 feet required setback = 13.7 feet, rounded to 14 feet). Mrs Field could give the City of Manistee 14 feet by 50 ft. of property from her west property line, running east. The west property line, after exchange, would exceed the required 10 foot setback from the house, as there would be 12.37 feet of setback. The square footage of the parcel would continue to be 4,500.

If trade is not a desired solution, the City could sell Ms. Field enough property to cure the encroachment of the garage addition and the driveway, but not the fence, for the reasons stated above. This would involve the sale of a 14 foot by 50 foot parcel adjoining the east line of Ms. Field's property. A reasonable value for this property is \$497 (14 feet X \$35.50 per front foot = \$497.00). \$35.50 per front foot is the value we are using to assess Ms. Field's lot, on the 1997 assessment roll. A parcel with 104 feet of frontage and 50 feet deep, would result. All setbacks would be met and the square footage of the parcel would be 5,200.



# CERTIFICATE OF SURVEY

I, ANTHONY M. SLAWINSKI, LICENSED PROFESSIONAL SURVEYOR NO. 13597 IN MICHIGAN, CERTIFY THAT THIS DRAWING IS AN ACCURATE REPRESENTATION OF A BOUNDARY SURVEY PERFORMED UNDER MY DIRECTION FOR THE FOLLOWING DESCRIBED PARCEL OF LAND  
SEE PAGE 2 FOR LEGAL DESCRIPTION OF PARCEL.



*Anthony M. Slawinski*

ANTHONY M. SLAWINSKI  
LICENSED PROFESSIONAL SURVEYOR No. 13597  
ABONMARCHE CONSULTANTS, INC.

10-30-97  
DATE OF CERTIFICATE

PLAT OF SURVEY FOR:

CITY OF  
MANISTEE



**ABONMARCHE CONSULTANTS, INC.**

381 First Street  
Manistee, Michigan 49660  
616-723-1198  
FAX: 616-723-1194

95 West Main Street  
Benton Harbor, Michigan 49022  
616-927-2295  
FAX: 616-927-4639

ARCHITECTS / ENGINEERS / LAND SURVEYORS  
ENVIRONMENTAL / CONSTRUCTION MANAGEMENT

DATE: OCTOBER 30, 1997

DRAWN BY: PGB

SCALE: 1" = 40'

SEC. 11 T. 21N R. 17W

# CERTIFICATE OF SURVEY

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PART OF LOT ONE (1), SECTION ELEVEN (11), TOWNSHIP TWENTY-ONE (21) NORTH, RANGE SEVENTEEN (17) WEST, COMMENCING 250 FEET WEST AND 263 FEET SOUTH OF THE NORTHEAST CORNER OF SAID LOT 1, THENCE WEST, 212 FEET; THENCE SOUTH TO MEANDERED LINE OF MANISTEE RIVER; THENCE EASTERLY ALONG SAID MEANDER LINE TO A POINT DUE SOUTH; THENCE NORTH TO THE POINT OF BEGINNING, CITY OF MANISTEE, ACCORDING TO THE PLAT THEREOF. MORE ACCURATELY DESCRIBED AS: COMMENCING AT THE NORTHEAST CORNER OF GOVERNMENT LOT 1, THENCE S 00°23'11" E, 269.82 FEET TO THE EXTENSION OF THE SOUTH RIGHT OF WAY LINE OF MCANLY STREET EXTENDED EAST TO THE EAST SECTION LINE; THENCE S 89°34'06" W, 249.40 FEET TO THE POINT OF BEGINNING; THENCE S 00° 23'11" E AND PARALLEL TO SAID EAST SECTION LINE 111' TO THE NORTH LINE OF THE MANISTEE RIVER; THENCE S 83°18'30" W ALONG SAID NORTH LINE OF THE MANISTEE RIVER, 238.44 FEET; THENCE N 00°23'11" W AND PARALLEL TO SAID EAST SECTION LINE, 137 FEET TO THE SOUTH RIGHT OF WAY LINE OF MCANLY STREET; THENCE N 89°34'06" E ALONG SAID SOUTH RIGHT OF WAY OF MCANLY STREET, 54.00 FEET; THENCE S 00°23'11" E AND PARALLEL TO SAID EAST SECTION LINE, 50.00 FEET; THENCE N 89°34'06" E AND PARALLEL TO SAID SOUTH RIGHT OF WAY LINE OF MCANLY STREET, 90.00 FEET; THENCE N 00°23'11" W AND PARALLEL TO SAID EAST SECTION LINE, 50.00 FEET TO THE SOUTH RIGHT OF WAY LINE OF MCANLY STREET; THENCE N 89°34'06" E ALONG SAID SOUTH RIGHT OF WAY LINE OF MCANLY STREET, 93.00 FEET TO THE POINT OF BEGINNING. CONTAINING 0.57 ACRES OF LAND MORE OR LESS.



*Anthony M. Slawinski*

ANTHONY M. SLAWINSKI  
LICENSED PROFESSIONAL SURVEYOR No. 13597  
ABONMARCHE CONSULTANTS, INC.

10-30-97  
DATE OF CERTIFICATE

PLAT OF SURVEY FOR:

CITY OF  
MANISTEE



**ABONMARCHE CONSULTANTS, INC.**

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ARCHITECTS / ENGINEERS / LAND SURVEYORS  
ENVIRONMENTAL / CONSTRUCTION MANAGEMENT

DATE: OCTOBER 30, 1997

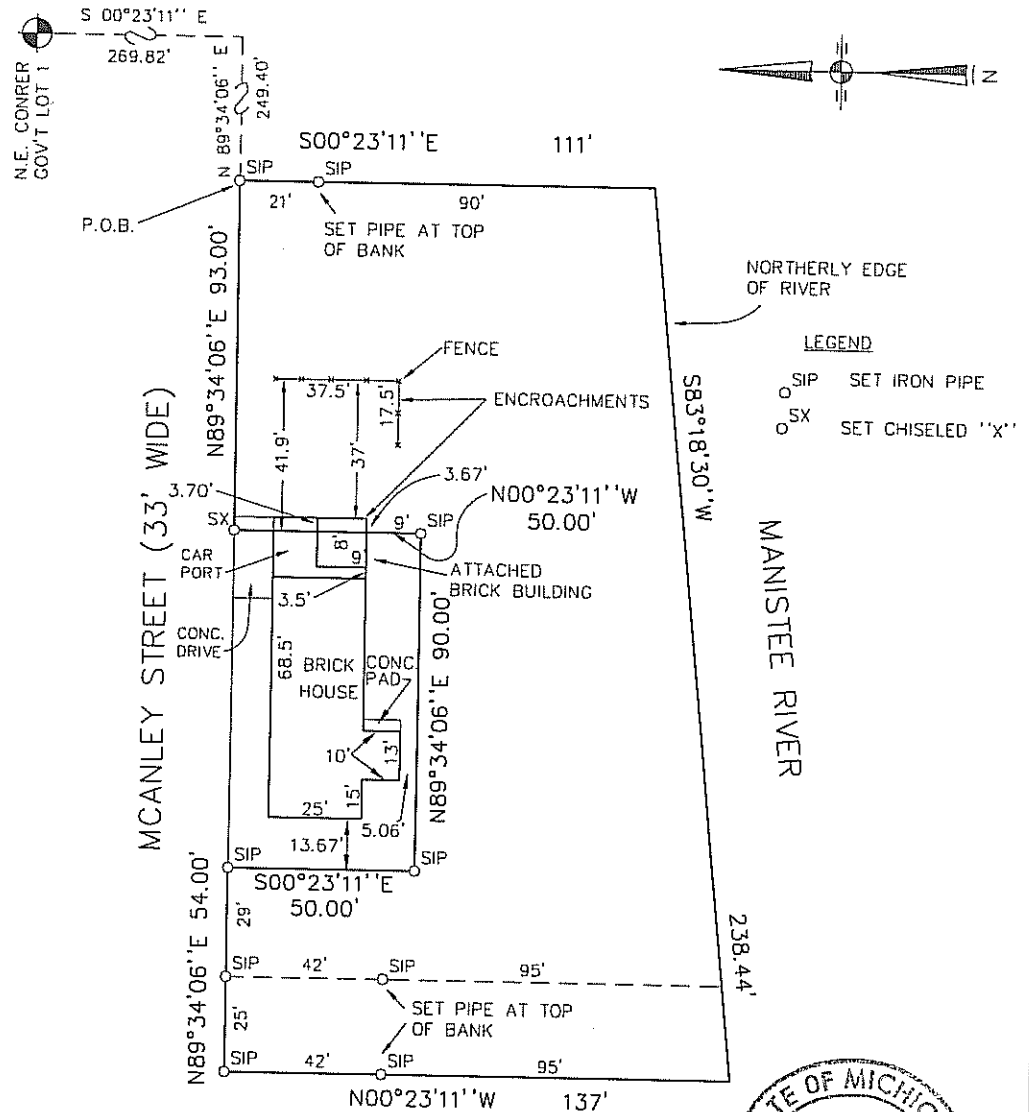
DRAWN BY: PGB

SCALE: -

SEC. 11 T. 21N R. 17W

# CERTIFICATE OF SURVEY

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SEE PAGE 2 FOR LEGAL DESCRIPTION OF PARCEL.



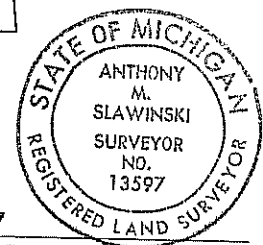
## LEGEND

- SIP SET IRON PIPE  
 ○ SX SET CHISELED "X"

*Anthony M. Slawinski*

ANTHONY M. SLAWINSKI  
LICENSED PROFESSIONAL SURVEYOR No. 13597  
ABONMARCHE CONSULTANTS, INC.

11-5-97  
DATE OF CERTIFICATE



PLAT OF SURVEY FOR:

CITY OF  
MANISTEE



**ABONMARCHE CONSULTANTS, INC.**

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11-60.97  
VARNUM, RIDDERING, SCHMIDT & HOWLETT<sup>LLP</sup>  
ATTORNEYS AT LAW

OCT 23 1997

BRIDGEWATER PLACE  
POST OFFICE BOX 352 • GRAND RAPIDS, MICHIGAN 49501-0352  
TELEPHONE 616/336-6000 • FAX 616/336-7000

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HILARY F. SNELL  
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KENT J. VANA  
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GORDON B. BOOZER  
H. EDWARD PAUL

MEMORANDUM

FROM: John W. Pestle, Patrick Miles

RE: Federal Preemption of Local Zoning -- Letters to Congress/FCC

DATE: October 15, 1997

Tom FYI

Letters are urgently needed to Congress and the Federal Communications Commission (FCC) opposing attempts by the FCC to preempt local zoning of cellular, radio and television towers and make itself a "Federal Zoning Commission" for cellular and broadcast towers. This memo briefly describes the FCC's attempts to preempt local zoning and provides suggested forms of letters to be sent to Congress and to the FCC. We have also attached information on a model cellular zoning ordinance, model lease of municipal property for cellular towers and the two latest FCC zoning preemption rulemakings.

Radio and TV Towers: The FCC has issued a proposed rule that would preempt local zoning of radio and TV towers generally as follows:

- Municipalities must act on zoning requests for broadcast towers within 21 to 45 days. Failure to act would result in the request automatically being deemed granted even though it did not comply with local zoning ordinances.
- Zoning decisions could, at most, be based on safety considerations. Property values, aesthetics and environmental effects could not be considered!
- All appeals of denials or partial denials go to the FCC, not the local courts.

A more detailed summary of this proposed rule is set forth in our September 12 memo, attached.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have this "exception swallow the rule" by contending that it can review all local zoning decisions to see if they have been impermissibly "tainted" by concerns over radiation from the towers. The FCC indicates that it may overturn local zoning decisions -- even though they are otherwise completely acceptable -- if it believes they were tainted by radiation concerns.

To implement this, the FCC has indicated that (1) -- claims of "radiation taint" must be appealed to it, not the courts, and (2) -- the FCC need not rely on the reasons a municipality gives for its decisions, but instead may substitute its judgment as to what the "true reasons" were for municipal action. The rule also prohibits municipalities from requiring cellular phone companies to measure the radiation from their towers for compliance with FCC rules. This proposed rule is also summarized in detail in our September 12 memo.

Cellular Towers/Moratoria: In a public notice issued earlier this summer, the FCC is attempting to preempt local moratoria on the siting of new cellular towers. This notice is not summarized in the attached memo of September 12 because comments and reply comments have already been submitted in that proceeding. If you would like a copy of our August, 1997 memo summarizing this moratoria proceeding, please call Nikki Klungle at 616-336-6743, or check our web page at [www.vrsh.com](http://www.vrsh.com).

In general, however, in this rulemaking the FCC is attempting to ban any moratoria that are more than 3 months in duration and to invalidate moratoria that it concludes were tainted by radiation concerns, similar to the above. The FCC disregarded the fact that Congress took away any jurisdiction it would have over such zoning matters and that moratoria are often useful zoning tools to allow municipalities to temporarily suspend certain classes of zoning approvals while needed zoning amendments are made.

Municipal Concerns: In general, municipalities view all of these actions as substantial threats to local zoning authority and vigorously oppose them. The FCC's proposals attempt to make the FCC a "Federal Zoning Board" and:

- Violate principles of Federalism, where zoning is recognized as being a local concern on which the Federal government cannot and should not intrude.
- Violate the Federal telecommunications statutes which, with cellular towers in particular, preserve local zoning authority and prevent the FCC from becoming involved on zoning matters.

- Represent an unprecedented intrusion on local affairs where the FCC can “second guess” true motives for municipal decisions, even where a decision completely complies with applicable law.
- Violates the freedom of speech and right to petition government for municipalities and their residents, by threatening to penalize cities and residents that express concern over radiation from cellular antennas, even if they do so in ways specifically allowed by Congress and the Constitution.
- On broadcast towers, violate constitutional and other protections by allowing some of the tallest structures known to mankind (over 2,000 feet tall) to be built without any local approval and impose timing constraints which bear no relation to local zoning procedures or constitutional protections.
- Improperly prevent property values, aesthetics, or environmental concerns from being considered in zoning broadcast and TV towers and even specify that safety considerations are not paramount.

Suggested Letters: Letters to Congress and to the FCC are one of the more effective ways of registering municipal opposition to these proposals and are urgently needed. Sample letters are attached with specific comments as follows. We have coordinated these with the National League of Cities and other national municipal organizations to support their efforts.

Congressional Letter: A suggested letter to Congress is attached. Please note the significant number of Senators, Representatives and national municipal officials who should be copied on this letter, including your state’s two senators. These copyees are essential because they typically are the committee or subcommittee chairs that have oversight over the FCC or are strongly supportive of municipal interests. Copying national municipal organizations will allow them to work more effectively on your behalf on these issues.

FCC Letters: Letters directly to the FCC are needed as well. Again, the suggested form of letter to go to the FCC is largely self-explanatory. It is addressed to the Chairman of the FCC, the four FCC Commissioners and key staffers at the FCC Bureaus involved in the various rulemakings.

To comply with FCC requirements, as set forth on the draft letter, an additional six copies of the letter have to be sent to the Secretary of the FCC, marked “Ex parte letter re cases WT 97-197, MM Docket 97-182 and DA 96-2140” so the Secretary can file two copies each in the dockets for the three proceedings in question.

Additional Materials: In case they are of interest we have attached copies of memos on our model cellular tower ordinance and on our model lease of municipal property (such as water towers, fire stations, parks and the like) for the placement of cellular towers.

VARNUM, RIDDERING, SCHMIDT & HOWLETT<sup>LLP</sup>  
ATTORNEYS AT LAW

Help Oppose FCC Rulemakings: Also attached is our September 12 memo on the two most recent FCC zoning preemption rulemakings. As the memo indicates, we are asking for contributions of \$250 towards comments we are filing on behalf of municipalities nationwide at the FCC opposing these rulemakings. Your community may wish to consider participating -- the more communities that participate, the more we can do at the FCC in opposition to its proposals.

Future Mailings: To be placed on a list for occasional mailings on cable and telecommunications matters of interest to municipalities, return the form attached to our September 12 memo, checking the box entitled "Please add me to your mailing list to receive information on further developments in this and related matters."

The Firm: Varnum, Riddering, Schmidt & Howlett is one of Michigan's largest law firms and is over 100 years old. It has a substantial municipal practice and is City Attorney, County Attorney or Township Attorney for several municipalities. It represents many municipalities as special labor counsel, bond counsel, environmental counsel and the like.

Municipal Cable/Telecommunications Practice: The firm has a national practice representing municipalities on cable and telecommunications matters. It has represented over 200 municipalities on such matters and has provided model documents or document packages on cellular towers to over 600 communities nationwide. It represented the National League of Cities and National Association of Telecommunications Officers and Advisors in February comments to the FCC opposing preemption of cellular tower zoning moratoria and represents approximately 65 municipalities in opposing the FCC's current efforts to preempt local zoning.

Questions/Further Information: If you have questions or would like period updates on these FCC proceedings you may wish to check our web site at [www.vrsh.com](http://www.vrsh.com). Or feel free to contact attorneys John Pestle, Patrick Miles, Terry Decker or Randy Kraker at 616-336-6000. Logistical and administrative questions can be addressed to Ms. Nikki Klungle (Mr. Pestle's secretary) at 616-336-6743.



[Municipal Letterhead]

Mr. William Kennard  
Chairman Designate  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

*Ex Parte Letter Re: Cases WT 97-197, MM Docket 97-182, and DA 96-2140*

Dear Chairman Kennard:

Please terminate all action in the preceding cases. They attempt to make the FCC the "Federal Zoning Commission" for cellular and broadcast towers and violate the intent of Congress, the Constitution and principles of Federalism.

Congress and the courts have long recognized that zoning is a matter of peculiarly local concern. The FCC has no zoning knowledge or expertise and is not accessible to most citizens.

For these reasons and others, Congress expressly preserved local zoning authority over cellular towers in the 1996 Act. Now the FCC is trying to get this jurisdiction back by issuing rules which improperly infringe on local zoning authority.

The FCC's efforts to assume jurisdiction over any local zoning matter where RF radiation is mentioned is unacceptable. The FCC ignores the fact that we cannot necessarily control the statements citizens make during meetings of our legislative bodies. Many municipalities, by state or local law, are required to allow citizens to speak on any topic they wish, even on items that are not on the agenda. This is part of what local government is all about.

Some of our citizens may be concerned about radiation from cellular towers. For the reasons just described we cannot necessarily prevent them from mentioning their concerns to us. The FCC's attempt to use this as a means to seize zoning authority and reverse local decisions violates basic principles of Federalism, Freedom of Speech and the rights of our citizens to petition their government.

This is particularly true if a municipality expressly says it is not considering such statements (that go beyond the radiation authority Congress left with municipalities) and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

For similar reasons the FCC cannot "second guess" the reasons for a municipality's decision. The FCC, like the courts, is bound by the stated reasons given by a municipality. Either these reasons are sufficient to uphold the decision or they are not. The FCC cannot "second guess" a

Radio/TV Towers: The FCC's proposed rule on radio and TV towers is as bad: It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is automatically deemed granted if the municipality doesn't act in this timeframe, even if the application is incomplete or clearly violates local law. And the FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! And all appeals of zoning and permit denials would go to the FCC, not to the local courts.

This proposal is astounding when broadcast towers are some of the tallest structures known to man -- over 2,000 feet tall, taller than the Empire State Building. The FCC claims these changes are needed to allow TV stations to switch to High Definition Television quickly. But *The Wall Street Journal* and trade magazines state there is no way the FCC and broadcasters will meet the current schedule anyway, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

These actions represent a power grab by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise, that never saw a tower it didn't like.

Please do three things to stop the FCC: First, write new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Tristani telling them to stop this intrusion on local zoning authority in cases WT 97-197, MM Docket 97-182 and DA 96-2140; second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and third, oppose any effort by Congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority.

The following people at national municipal organizations are familiar with the FCC's proposed rules and municipalities' objections to them: Barrie Tabin at the National League of Cities, 202-626-3194; Eileen Huggard at the National Association of Telecommunications Officers and Advisors, 703-506-3275; Robert Fogel at the National Association of Counties, 202-393-6226; Kevin McCarty at the U.S. Conference of Mayors, 202-293-7330; and Cheryl Maynard at the American Planning Association, 202-872-0611. Feel free to call them if you have questions.

Very truly yours,

cc: [see attached list]

## Copy List

Senator John McCain  
241 SROB  
Washington, DC 20510-0303

Senator Conrad Burns  
187 SDOB  
Washington, DC 20510-2603

Senator Kay Bailey Hutchison  
283 SROB  
Washington, DC 20510-4304

Senator Slade Gorton  
730 SHOB  
Washington, DC 20510-4701

Senator Dianne Feinstein  
331 SHOB  
Washington, DC 20510-0504

Representative Tom Bliley  
2409 RHOB  
Washington, DC 20515-4607

Representative W. J. Tauzin  
2183 RHOB  
Washington, DC 20515-1803

Representative Edward J. Markey  
2133 RHOB  
Washington, DC 20515-2107

Representative John D. Dingell  
2328 RHOB  
Washington, DC 20515-2216

Representative Bob Goodlatte  
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Washington, DC 20515-4606

Representative James Moran  
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Washington, DC 20515-4608

Representative Bart Stupak  
1410 LHOB  
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Representative Joe Barton  
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Ms. Cheryl Maynard  
Government Affairs Coordinator  
American Planning Association  
1776 Massachusetts Ave. NW, 4th Floor  
Washington, DC 20036

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[Municipal Letterhead]

[Your two U.S. Senators]

[Your U.S. Representative]

Dear Senator \_\_\_\_, Senator \_\_\_\_ and Representative \_\_\_\_:

We are writing you about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. In its rulemaking the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

Cellular Towers - Moratoria: Relatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.

municipality's true reasons any more than the courts can "second guess" the true reasons for the FCC's decisions.

The FCC's proposal to ban moratoria on cellular towers is objectionable for many of the reasons set forth above. It also fails to recognize that for some municipalities moratoria are a well recognized zoning tool, particularly while they revise zoning ordinances. More importantly, Congress took away the FCC's authority over cellular tower zoning, and this includes moratoria.

Similarly, please terminate the FCC's proposed rulemaking preempting local zoning of broadcast towers. As you well know, broadcast towers can be over 2,000 feet high -- they are some of the tallest structures known to man. It is therefore astounding that you would propose that municipalities can't consider the impact of such towers on property values, the environment or aesthetics and that even safety considerations take second place. Safety always has to be the first priority.

And setting artificial time limits for municipalities to act on environmental, zoning and building permit approvals for such towers serves no useful purpose. It is a violation of the U.S. Constitution, the Communications Act and Federalism for you to put time limits on municipalities to act on all local approvals and then state that all such applications will be automatically deemed granted if we don't act within this timeframe, even if the application is incomplete or violates state or local law.

The FCC should consider how it would react if it was told that any broadcast license application would be automatically deemed granted unless the FCC acted on it within 21 to 45 days; that this rule applied whether or not the application was complete; whether or not the applicant was foreign or domestically owned or otherwise qualified; or even whether the frequencies were available. And the rule would apply without regard to whether the tower for the station was at the end of an airport runway, in a wetland or in a historic district.

For these reasons the proposed actions all violate the Communications Act and the Constitution. Please terminate all these proceedings without taking the actions proposed therein.

Very truly yours,

cc: Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission (6 copies)  
1919 M Street, NW  
Washington, DC 200554

cc: [see attached]

## List of Copies

Commissioner Designate Harold Furchtgott-Roth  
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Washington, DC 20554

Commissioner Designate Michael Powell  
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Commissioner Designate Gloria Tristani  
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Mr. Dan Phythyon  
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